S.B. Civil Misc. Appeal No.1/2004

M/s. Mehta Construction Company and others.
vs.
State of Rajasthan.

Date : 13.9.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Arun Bhansali, for the appellants.
Mr. N Mulchandani, Dy.GA, for the respondent.

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Heard learned counsel for the parties.

The appellants are aggrieved against the order dated 30.9.2003 passed by the Additional District Judge (Fast Track) No.3, Banswara whereby the appellants' application under Section 34 of the Arbitration Act, 1940 was dismissed on the ground that the suit has been filed by the respondent State against the appellants/defendants for recovery of the amount of bond and said amount cannot be said to be any amount sought to be recovered under the agreement between the parties contains arbitration clause.

The trial court held that there was separate contract for purchase of trucks and, therefore, the respondent State is recovering the amount of bond not under the contract, which is independent contract.

Learned counsel for the appellants pointed out that the

plaintiff's entire case is founded upon the contract between the plaintiff and defendants. It is also not in dispute that there is a term in the agreement providing for settlement of disputes through arbitration. Learned counsel for the appellants also pointed out that there are relevant conditions which are conditions no.2 and 65. The bonds in question were given under the same contract. According to learned counsel for the appellants, the order of the court below is self contradictory as the court below at para no.10 clearly held that the trucks were purchased under the agreement and in the next line, the court below observed that the trucks were not purchased under the agreement and there was separate contract for the purchase of the trucks. It is also submitted that there is no other contract except the contract for which the appellant undertook the work and obtained the facilities for which the appellants submitted the bonds.

Learned counsel for the respondent submitted that the appellants committed default and did not complete the work. It is also submitted that the appellants gave separate bonds for payment of amount and, therefore, the respondent State can recover the amount of the bond from the appellants without invoking the provisions of the agreement.

I considered the submissions of learned counsel for the parties and perused the record.

A bare reading of the plaint discloses that the entire case of the respondent is founded upon the contracts no.1/81-82 and 2/81-82. It is not in dispute that as per the condition no.2 of the contract, the State could have given the loan to the contractor for purchase of machineries to the extent of 90% with the maximum limit of Rs.4 lakhs. Said loan was payable to the contractor on interest at the rate of 12% p.a. It is provided in condition no.2 that 20% of the amount will be recovered from the running bill of the contractor. In the condition under which the bond was executed as well as in the bond itself, there is a clear mention that the contractor applied for and have been granted advance of Rs.1,78,000/- against machinery and equipment and particulars of which have been set out in the schedule attached to the contract. There is a clear reference in the bond itself about the terms and conditions between the parties for execution of the work under contract no.1/81-82. Therefore, in the above facts, it is clear that the bonds were given only under the contract of work and the contract contains the condition of arbitration. Therefore, the court below was absolutely wrong in observing that the trucks were not purchased under contract containing the clause of arbitration.

In view of the above, the appeal deserves to be allowed, hence, allowed, the order of the trial court dated 30.9.2003 is set aside, the application filed under Section 34 of the Arbitration Act, 1940 is allowed and the proceedings of the suit are stayed. The respondent will be

free to proceed for appointment of Arbitrator for determination of the dispute in accordance with law.

(PRAKASH TATIA), J.

S.Phophaliya